Supreme Court, U.S.
FILED

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No. 94 440 AUG 24 1994

IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

FRANK SETOLA,
CHERYL SETOLA,

Petitioners,

vs.

BOB SCHMIDT CHEVROLET, INC.,

and

HYRDA-MATIC DIVISION,
GENERAL MOTORS CORPORATION,

and

GENERAL MOTORS CORPORATION,

Respondents.

APPENDIX FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR SIXTH CIRCUIT

VOLUME II

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78 pp

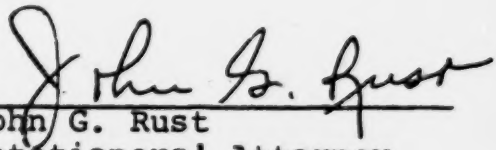
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CERTIFICATE OF SERVICE OF APPENDIX

Three copies of the above Appendix are mailed by U.S. Mail this August 24, 1994, to Attorneys Marcia Wagner and David J. Rohrbacher, Nicholson and Light, Attorneys for Defendant-Appellee Bob Schmidt Chevrolet, Inc., One SeaGate, Suite 170, Toledo, Ohio 43604-1555, and Attorneys Ray A. Farris and Dennis A. Lyle, Attorneys for Defendant-Appellee Hydra-Matic Division, and General Motors Corporation, One SeaGate, Seventeenth Floor, Toledo, Ohio 43603-2088.



John G. Rust
Petotioners' Attorney

He drove the car, the car was shaking so bad that he had to keep two hands tight on the steering wheel and this made him sweat because holding the steering wheel was so hard. Mr. Setola was keeping the gas pedal halfway to the floor, just to get the car to pull itself.

After Mr. Setola got downtown in Toledo, and was at his wife's fofice, Best Guides, Inc., in the Security Building, Mr. Setola called to Bob Schmidt Chevrolet, talked to Mike, a service manager, and also his boss, name not known, and told them how hard, as mentioned above, the brake pedal was to press, and that it wouldn't go down, and that Mr. Setola had to use the emergency brake and downshifting to slow, and to stop the car. Mr. Setola also told them about the tires smoking, the car vibrating, the humming noise and a metal squealing noise, while locking and having to press down more on the accelerator to give the car the gas

to get it to go; and when MR. Setola took his foot off the gas pedal, the car didn't seem like it wanted to roll; and the car was hard to steer. (End. of p. 16)

TELEPHONE CALL FROM MR. SETOLA TO SERVICE MANAGER, "MIKE", BEFORE DRIVING THE CORVETTE ON ANTHONY WAYNE TRAIL TO THE POINT OF COLLISION

JANUARY 30, 1986

Sometime about mid-morning on January 30, 1986, a Thursday, after Mr. Setola was downtown and he was at his wife's place of business, Best Guides, Inc., Mr. Setola telephoned to Bob Schmidt Chevrolet, talked to "Mike" a service Manager. In this conversation, Mr. Setola told Bob Schmidt Chevrolet that the brake pedal would not go down, the car was shaking, stalling out, that the wheels and brakes were locking, and that Mr. Setola had to apply the bas in order to make the car go, and in order to stop the car, that he had to use the downshifting, and to use the emergency brakes, and that the regular brakes were not working. The tires got hot

and were smoking and then after MR. Setola told him all about the problems he had been having, the above is not a complete list of all the problems which Mr. Setola told him, then the first service manager put his boss on and his boss told Mr. Setola that it was a $30,000.00 car, that he was not having any problems, that it was all in his head and to go ahead and to drive the car and to bring it out to Bob Schmidt Chevrolet. (End of p. 17)

After MR. Setola had told the Bob Schmidt people on January 30, 1986, in the morning, about all the problems, and the problems he had in driving the car from Five Point Road down to downtown Toledo, and the Bob Schmidt people had told him that it was all in his head, that the car was safe to drive, he then decided to drive, and would not have driven the car except for what the Bob Schmidt Chevrolet man said.

In deciding to drive, he relied upon

what the two Bob Schmidt Chevrolet people had told him when they were on the telephone with him, that it was safe to drive, and that he should drive the car, and that there were no problems with the car, that it would operate all right, that all the problems were just in Mr. Setola's head and he relied upon that, and thought it was safe for him to drive the Corvette to Bob Schmidt's as he had safely driven it to downtown Toledo.

As he drove on Huron Street, south of Monroe Street, he had to use the emergency brake to stop at Monroe Street, then he turned right onto Monroe Street, and then went onto the street leading to the Anthony Wayne Trail, Mr. Setola then turned to the south and was going onto the Anthony Wayne Trail. AFter he got ont he Anthony Wayne Trail, the way ahead was clear, he was going around to 45 to 50 miles per hour, somewhere along in there.

Then ahead, at the City Park inter-

section, he saw cars stopped, he then tried to apply the emergency brake, but the emergency brake would not work. HE tried to press down on the brake pedal, but it would not go down, he down shifted so as to slow the car as best he could, pedal frozen solid. HE continued to press on the pedal and then he heard a loud pop, like a shotgun went off. The next thing (End of p. 18) he knew was that he saw the car ahead of him, and did all he could to stop. When Mr. Setola was trying to slow and stop the Corvette after he saw the cars stopped ahead at City Park, he used the emergency brake and down shifted, and he would have been able to stop, if the Corvette had slowed like it had when Mr. Setola downshifted and used the emergency brake as he did in driving into and stopping in downtown Toledo, but the Corvette's braking system didn't brake and slow as it had before. If the Corvette had slowed as he approached City Park, and as

he used the emergency brake, like it had in driving into downtown Toledo, he would have been able to have stopped. By downshifting and the emergency brake I had slowed to 10 mph as impact.(F.F.S.)

After Mr. Setola's Corvette stopped, he noticed then next the brake pedal went all the way to the bottom of the floor, and that there were no brakes. MR. Setola then checked the lady and the man ahead of him, and saw there was nothing ufrther that Mr. Setola could then do. He went to a phone, called his wife, and then called the police, and made the police aware of the situation.

His wife, Cheryl, arrived just as the police got there, then the police officer got into the Corvette, tried the brakes, and the brakes went to the floor. This was seen by Mr. Setola. MR. Setola told the police officer that he has been unable to stop because the brakes failed on the Corvette. Then, a witness came up, who was Lisa Rhodes,

and she was trying to give a statement to the police officer, but he would not take it. The Witness Rhodes said that Mr. Setola was not speeding, and had driven like he was trying to stop, but was unable to do so.

The police officer then said the car had to be moved off the road and then the car was pushed off the Anthony Wayne Trail to the (End of p. 19) right, away from the River, and parked about thirty feet from the Anthony Wayne Trail. The Police officer came and asked if he was all right. Mr. Setola told him he was sick to his stomach, thought he was going to vomit, and Mr. Setola asked the police officer how the police officer could say it was a sure clear distance when the police officer was not there to see it, and the police officer said, "That's the way we do it."

Then Mr. Setola and his wife went to Mercy Hospital, waited in the emergency room for four and one-half hours, decided to

leave because they had an accident they were taking care of. They were not going to get to Mr. Setola that Mr. Setola and his wife went to their residence at Five Points Road, and Mr. Setola called who gave the telephone number of the Jerry Sybert, and Mr. Sybert had a flat bed tow and the car was then towed to Mr. Setola's residence at Five Points Road.

Mr. Setola had inspected the car after the collision, saw that the hood was jammed and locked down and saw that the car was in the same condition, whenever it had arrived at Mr. Setola's residence as it had been right after the collision. There was no way that anyone could open up the hood, because the hood was jammed.

The same day, the accident was reported to Mr. Setola's insurance company, the Celina Insurance Company, and Mr. Setola also told Mr. Travis Neely of the collision.

After the Celina Mutual Insurance Com-

pany had received report of the collision, then the car was towed over to the American Customs Garage on Alexis Road. MR. Setola then saw that the car was at the American Customs, and saw that it was in the same condition as at the collision, of January 30, 1986, as described here before. (End p. 20)
(P. 21)
The American Customs Garage is at 5036 Alexis Road, Sylvania, Ohio.

When MR. Setola had been pressing on the brake pedal and the so-called pop happened, he noticed that the brake pedal did go down, and the brake pedal went right to the floor, and there was no braking effect that he could notice. The car was still in motion at that time. (End of p. 21)

STATEMENT OF EVENTS FROM THE CORVETTE BEING AT AMERICAN CUSTOMS GARAGE, MOVED TO DAVE WHITE CHEVROLET AND TESTING ON THE BRAKE SYSTEM INOLVED WITH MINERAL OIL CONTAMINANT FOUND IN THE CORVETTE BRAKE SYSTEM

From the scene of the accident, I had the car towed, as is, to the Five Point Road near Maumee, where I was staying, by

one JErry Sybert. After the collision, the hood was so damaged, that one could not pull it up nor open the hood. The hood was not opened, later at the American customs, then, I was present, and a Mr. Clarence Werener, and a Mr. Larry Wilson, an engineer, were present and Mr. Wilson took some of the brake fluid out of the brake system. I know that the hood was in the same condition when finally the car was towed to the American Customs, in Toledo, Ohio, in the first part of February, 1986, as it had been immediately after the collision, and that the hood had not been raised. Likewise, I know that there was no change to occur in the appearance of the outside of the engine parts, from the time that the hood was first opened, at the American Customs, until the car was taken to the Dave White Chevrolet, and that likewise, then, there was brake work done at the Dave White Chevrolet, as reported by professional Engineer Lawrence Wilson, President, Product

Analysis and Structural Testing, Inc., as shown in his report No. 209586.

Before the brakes failed on the Corvette on the Anthony Wayne Trail at City Park on January 30th, 1986, my corvette was not worked on by any other garage or repair people, except the Bob Schmidt Chevrolet, Inc., from the time that I got in until of the aforesaid collision.

I checked on the Corvette at the American Customs, on Alexis Road, from time to time. AFter the hood had been opened, as described above, I was at American Customs another time, and Mr. Clarence Werener, the adjuster for the Celina Insurance Company, he asked me if I had authorized anyone from General Motors, or Bob Schmidt Chevrolet, or anybody else, to go through my car, or to take any fluid out, or to take out any of the papers in my car. I told him that I had not, and that the only person who was authorized, was the Celina Insurance Company,

and whoever they designated. MR. Werener told me that a man, who he knew to be a representative of General Motors, had gotten into my car, as Mr. Werener had seen him get into the car, and take out some brake fluid and some documents that were inside the car, particularly in the glove compartment. In the group of papers in the glove compartment, I had had some repair orders from Bob Schmidt Chevrolet, other than the ones listed on page 2 of the Affidavit of John Schaller, which is Exhibit B in Defendant Bob Schmidt's Motion for Summary Judgment. I have my copy of the repair order of December 9, 1985, No. 56397, which I had left at my mother's, and also the repair order dated January 23, 1986, because that was given to me after the collision of January 30, 1986, and I had not put it in my Corvette.

Mr. Clarence WErener had not told me about somebody taking the papers out of my car at American Customs, nor taking the

brake fluid out, until well over a year after the collision of January 30, 1986, and I did not know about that at the time we were all out at the Dave White Chevrolet, when Engineer Wilson, my attorney, Tony Georghetti, and a representative of the General Motors Company, were all there, as shown in the report which is attached to the Affidavit of Lawrence P. Wilson, filed in this case on July 1, 1991. At the American Customs shop on Alexis Road when the hood was first opened by the mechanics there, who had to open it by tools because it was jammed and locked shut from the collision, Mr. Setola was present. (End of p. 23) The hood was opened by the mechanic cutting the fiberglass hood so it would open. When the hood was opened up, I could see that there was slight, sticky, gooey, fluid, over different parts of the motor, and the caps were off of the master cylinder, each being roughly seven to twelve inches away from the cylinder.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Frank Setola, et al.,	*	Case No. 3:90CV7317
Plaintiffs,	*	Judge Nicholas J. Walinski
vs.	*	AFFIDAVIT OF FRANK F. SETOLA SUBMITTED
Bob Schmidt Chevrolet, Inc., et al.,	*	BY PLAINTIFFS IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS
Defendants.	*	John G. Rust
	*	4628 Lewis Avenue
	*	Toledo, Ohio 43612
	*	(419) 476-0347
		O.S.CT. #0000098

* * * * * * * * * * * *

STATE OF OHIO)
) SS
COUNTY OF LUCAS)

Frank F. Setola, being first duly sworn, deposes and states as follows:

At the time at the American Customs shop on Alexis Road, Toledo, Ohio, when the hood of his Corvette, which had been in the collision of January 30, 1986, was first opened up, the mechanic had to cut the fi-

berglass, to get the hood up. PResent then, were MR. Larry Wilson, an Engineer, hired by the Celina Insurance Company, Clarence Werener, an adjuster for the Celina Insurance Company, and Mr. Setola, and also Mr. Tony Georghetti, Mr. Setola's then attorney. Once that the hood (End of p. 25) was up, one could see white gooey, fluid, all over the motor. The caps were blown off the master cylinder of the brake system, WERE APPROXIMATELY SEVEN TO TWELVE INCHES AWAY FROM THE CYLINDER. (Page 26)

AFFIDAVIT SIGNATURE PAGE

Have you read your foregoing Affidavit of 28 number of pages, including this page? x yes _____

Do you swear before me, a Notary Public, State of Ohio/Michigan that your statements, to the best of your recollection, are true? x yes _____.

(s) Frank F. Setola
Signature of Affiant

Sworn to before me and subscribed in my presence this 31st day of December, 1991.

(s) JOhn G. Rust
John G. Rust
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission has no expiration date

147.03 BC

FILED
1990 JUNE 22 PM 3:50
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Frank Setola and Cheryl Setola, P.O. BOX 3111 Pt. Pleasant, New Jersey 08742, Plaintiffs, v. Bob Schmidt Chevrolet, Inc. 1425 Reynolds Road Toledo, Ohio 43615, and Hydra-matic Division General Motors Corporation 1455 W. Alexis Road Toledo, Ohio 43612, and General Motors Corporation General Motors Bldg. Detroit, Michigan 48202, Defendants.	*	Case No. 3:90CV7317 Judge Nicholas J. Walinski COMPLAINT AND JURY DEMAND ENDORSED HEREON John G. Rust (0000098) 833 Security Building Toledo, Ohio 43604 (419) 243-9191 Attorney for Plaintiffs

1. Plaintiffs Frank Setola and Cheryl Setola, husband and wife, now residing and

domiciled in New Jersey. Defendants Bob Schmidt Chevrolet Inc.and Hydra-matic Division, General Motors Corporation, are duly organized and Active Corporations with their principal place of business in Ohio, and General Motors Corporation is duly organized and active and has its principal place of business in Michigan. Jurisdiction is claimed in this Court on Diversity of Citizenship of the parties, under Title 28, Section 1332. These causes of Action arose in this Division and District, in Toledo, Ohio. An Action on these causes of Action was timely commenced in the Court of Common Pleas, Lucas County, Ohio on January 29, 1988; service had and appearances by Defendants entered; was removed to this Court and then remanded back to the Court of Common Pleas, Lucas County, Ohio; and after proceedings in said Court, the said Actions were dismissed on June 22, 1989, not upon the merits nor with prejudice, but with the right given to refile

on or before June 22, 1990, as Plaintiffs now do.

2. Plaintiff Frank Setola on or about December 9, 1985, purchased a new Chevrolet Corvette from Bob Schmidt Chevrolet, Inc., and shortly afterwards the said Corvette presented brake problems, and the said Corvette was brought back to Bob Schmidt, Chevrolet, Inc., for repairs.

3. Due to the wrongful acts and omissions by Defendnats and each of them, Plaintiff Frank Setola was injured when on or about January 29, 1986, in Toledo, Lucas County, Ohio, the Corvette's brakes failed to function and caused the said Corvette to collide with another vehicle on the Anthony Wayne Trail.

4. Defendants Hyrda-Matic Division of General Motors, General Motors Corp. and Bob Schmidt Chevrolet, Inc., were each guilty of wrongful conduct, including negligence, and breach of contract, and breach of warranty, which proximately caused serious and perma-

nent injury to Plaintiff Frank Setola, and all the damages flowing therefrom.

5. The unlawful acts and omissions of each of the Defendants included, without exclusing other acts and omission, the following acts and omissions:

A. Failure to exercise ordinary care and diligence in taking all the steps necessary to have manufactured, and delivered, and serviced, the Corvette so that there would not occur the brake failures which did occur.

/and design

B. Failure to manufacture, and deliver a Corvette car which was safe and useful for the purposes for which it was sold and purchased;

C. Failure to instruct and inform Bob Schmidt Chevrolet, Inc., of the dangers in the Corvette in question, and how effectively to diagnose and repair said defects and problems;

D. Failure to inform and warn Plaintiffs of the dangers involved in the delivery of the said Corvette, at the times herein when it was dangerous so to do;

E. In failing to warn Bob Schmidt Chevrolet, Inc., and Plaintiffs of the dangers inherent in the said Corvette, in the various circumstances encoun-

ered and experienced;

F. In warranting and representing to Plaintiffs that said Corvette was safe and useful for the purposes sold.

6. Plaintiff Frank Setola was proximately caused by Defendants and each of them, serious head and brain injuries, which have been and in the future probably will be, disabling; pain and anxiety and concern about the extent of his recovery therefrom; to need and undergo medical and hospital care and expenses;

7. Defendants proximately caused Plaintiffs to suffer additional damages, including deprivations, interferences with their lives, other/ and loss of income, loss of use and depreciation in value; and repair bills.

8. Defendants proximately caused Plaintiff Cheryl Setola to suffer a loss of consortium, and her husband's services and to be concerned now and in the future, about his and her welfare.

WHEREFORE, Plaintiff Frank Setola, and Cheryl Setola, each, pray that each may have

and recover judgment against each Defendant, Bob Schmidt Chevrolet, Inc., and Hyrda-Matic Division of General Motors and General Motors Corp., for Five Hundred Thousand Dollars ($500,000), court costs, attorney fees and interest.

Respectfully submitted,

BY John G. Rust (s)
John G. Rust
Attorney for Plaintiffs
833 Security Building
Toledo, Ohio 43604
(419) 24309191

JURY DEMAND ENDORSED HEREON

Plaintiffs demand trial by jury of all the triable issues hereon.

John G. Rust (s)
John G. Rust
Attorney for Plaintiffs

FILED
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NORTHERN DISTRICT OF OHIO
TOLEDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Frank Setola, et al.,	*	CASE NO. 3:90CV7317
Plaintiffs,	*	JUDGE NICHOLAS J. WALINSKI
vs.	*	
Bob Schmidt Chevrolet, Inc., et al.,	*	AFFIDAVIT OF ERVIN LESHNER, P.E., SUBMITTED BY PLAINTIFFS IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS.
Defendants.	*	
	*	John G. Rust 4628 Lewis Avenue
	*	Toledo, Ohio 43612 (419) 476-0347
	*	Attorney for Plaintiffs
	*	O.S.CT.#0000098

* * * * *

CERTIFICATE OF SERVICE

A copy of the foregoing Affidavit is served upon Counsel for the Defendants, Bob Schmidt Chevrolet, Inc., Attorney Marcia A. Wagner, One SeaGate, Suite 710, Toledo, Ohio 43604, and Attorney Ray A. Farris, for General Motors, Fuller & Henry, One SeaGate, Suite 1700, Toledo, Ohio 43603, by First Class U.S.

Mail this 8th day of July, 1991

John G. Rust (s)
John G. Rust, Attorney

ERVIN LESHNER, P.E.
REGISTERED PROFESSIONAL ENGINEER
131 CENTURA
CHERRY HILL, NEW JERSEY 08003
609-428-6125

Affidavit pertaining to:

Plaintiff, Frank F. Setola, Jr.

v.

General Motors, Bob Schmidt Chevrolet, Inc. et al

AFFIDAVIT OF ERVIN LESHNER, P.E.

July 1, 1991

Ervin Leshner, P.E. being first duly sworn, deposes and states that the statements of fact and opinion by him in this Affadavit are, to the best of his recollection true, and of his personal belief, and knowledge, except where stated otherwise.

1. Previously I have testified as an Expert Witness, in cases in the following courts:

Third Federal District Court, Philadelphia, PA

District Court, Barnstable, MA

District Court, Newark, NJ

District Court, Media, PA etc.

2. In regard to the issues presented to me for investigation and the statements made to me by Mr. Frank Setola, I have talked with him, read the report no. 209586 brake failure investigation, 1985 Corvette, for Celina Mutual Insurance Co., submitted by Mr. Lawrence F. Wilson P.E., President Product Analysis and Structural Testing Inc., and assuming the truth of what Mr. Wilson did nad observed, as stated in his said report, and assuming further, the truth of the Analytical Report", submitted by Mr. K.F. Sporek, dated May 5, 1986, ref.:209586 by the Contract Laboratories, Inc., Sylvania, Ohio, and so signed by Mr. K.F. Sporek; and assuming further, that in the brake system fluid,

as it was withdrawn by Mr. Lawrence F. Wilson, had the ingredients or contaminants, as so reported by the said Contract Laboratories, Associates, Inc.; and in assuming the history of the condition and what was done with the said 1985 Chevrolet Corvette, heretofore mentioned by Mr. Setola, it is my professional opinion, that to a reasonable degree of engineering and certainty, that, the said brake system fluid was so contaminated that it did cause the brake failure mentioned by Mr. Setola, which in turn caused Mr. Setola to be unable to stop said Corvette, and thereby the contaminated brake system fluid did proximately cause the said collision of January 30, 1986 and the injuries done therein; and,

3. Further, it is my opinion that contaminants in the brake system fluid of the said Setola 1985 CORVETTE were present and could not be detected on visual inspection because there was no requirement in the General Motors

specifications to color code brake fluids.

4. Further, it is my opinion that probably, not possibly, the said brake fluid was contaminated at the time the said Corvette was turned over to the Bob Schmidt Chevrolet in August 1985.

5. Further, it is my opinion that the contaminated fluid in the brake system of said Corvette could have possibly been added at the time Bob Schmidt Chevrolet serviced the vehicle prior to delivery to Mr. Setola.

6. Further, the said Corvette was defective, dangerous to be operated, because it that this contaminant in the brake system would cause a brake failure, as shown in the photographs and the discussion by Professional Engineer, Lawrence F. Wilson in his above mentioned report; and I have considered his photographs, his visual observations, the findings made and done by him personally, as stated in the said report in issuing these opinions.

7. The above statements are preliminary. Upon my full investigation, I plan to issue a report indicating and showing the negligence of General Motors and Bob Schmidt Chevrolet that caused the accident and injuries to Mr. Setola.

Ervin Leshner (s)
Ervin Leshner, P.E.

Sworn and Subscribed before
me this 2nd day of July, 1991

Janet Ferguson (s)

Janet G. Ferguson
Notary Public of New Jersey
My Commission expires June 24, 1993

FILED
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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Frank Setola, et al.,	*	CASE NO.3:90CV7317
Plaintiffs,	*	JUDGE NICHOLAS J. WALINSKI
vs.	*	
Bob Schmidt Chevrolet, Inc., et al.,	*	AFFIDAVIT OF PETE DEWEES, SUBMITTED BY PLAINTIFFS IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS.
Defendants.	*	
	*	John G. Rust 4628 Lewis Avenue Toledo, Ohio 43612 (419) 476-0347 Attorney for Plaintiffs O.S.CT# 0000098

* * * * * *

CERTIFICATE OF SERVICE

A copy of the foregoing Affidavit is served upon Counsel for the Defendants, Bob Schmidt Chevrolet, Inc., Attorney Ray A. Ferris, for General Motors, Fuller & Henry, One SeaGate, Suite 1700, Toledo, Ohio 43603, by First lass U.S. Mail fhis 8th day of June, 1991.

John G. Rust (S)
John G. Rust, Attorney

APP 110

STATE OF OHIO:
SS:
COUNTY OF LUCAS

Pete DeWees, being first duly sworn, deposes and states that his statements in this Affidavit, are true to the best of his recollection and knowledge:

Mr. R. Alright, thank you. I'm John Rust Attorney. I've got my new office at 4628 Lewis Avenue, 476-0347. I represent Mr. Frank Setola and his wife Cheryl in their claims arising out of the collision on the Anthony Wayne Trail at City Park back January the 30th, 1986. The papers that I have indicate that at the time, Frank alone was driving his car South, I call it South going to Maumee, maybe he was going 45, 50, something like that, comes up to a car that's stopped for a traffic light at City Park, goes to apply the brakes and he knows, he finds at that time that the brake pedal will not go down. He then is unable to stop the car, the car hits the rear end of the people, a lady is injured in that particular accident. The car then is moved over on City Park. Remember, there is a garage, more or less off to the Southwest of that intersection over there, and that's where it was. Then after that, the car is towed by Jerry Sybert, I think I've got the name right, out of Swanton out to where Frank lived around Maumee. In time then, it was towed to American Customs. Was there anything that places in your mind the time whenever it first came to American Customs?

*thing PD

Mr. D: About the only ~~think~~ that I remember is trying to move the car from where the tow truck operator dropped it

* The above asterisk and those hereafter refer to any longhand corrections by Mr. Dewees.

*outside PD
inside the building, and I noticed
~~that the~~ PD
there were brake pedal was as hard as a rock.

Mr. R: You did?

Mr. D: And at that time I decided not to start the car, and I think we pushed it into a stall.

Mr. R: I see. So then when you tried to depress the brake pedal, it would not go down.

Mr. D: That's correct.

Mr. R: Now then, do you recall anything about the condition of the fluid whenever it first got there, as to whether or not the hood, unless you used a crow bar it would come up, or something like that?

Mr. D: No, the hood was jammed and impossible to open without forcing it off the vehicle.

Mr. R: I see. OK, so at the start then, the hood remained closed in the same position in which your company received it for some time?

Mr. D: That is correct.

*PD
Mr. R: OK. So then ~~from~~, you put it inside your garage. What was your position then with that American Customs?
parts
Mr. D: I was the ~~fixxi~~ manager.

*Lea PD
Mr. R: Alright. Now Mr. Bart ~~Leigh~~, as I understood it called you the Service Manager.

Mr. D: Well, he was actually in charge of all the service work, I would write service repair orders estimates, handle parts for the vehicles, sell jobs to customers.

Mr. R: Yes, well previously have you ever worked as a mechanic?

Mr. D: No, I'm not a mechanic, I never have been.

Mr. R: But in your work before this time at American Customs, have you ever worked as a Service Writer or a Service Manager for any firm?

Mr. D: No, never in my life.

Mr. R: You didn't.

Mr. D: No sir.

Mr. R: Well, how did you acquire your familiarity with cars?

Mr. D: I have gasoline instead of blood in my veins.

Mr. R: Uh-huh. Alright. So you just got it through experience then?

Mr. D: Yes sir.

Mr. R: I follow you. Alright, then so the car was brought in. I realize that you and I have talked before on the telephone. I know one time you had something doing with your family when I was about; it seemed to me anyhow something came up or maybe you were going to be out of town, and so, I didn't get to come and see you at that time. What I remember is that

your remarks have been straightforward and in direct, the types of remarks that are perfect to a lawyer because they seem to be objective. And so you work with the public, I work with the public, you can understand what I'm saying to you by that. And so, what next then, stands in your mind in regard to the sequence of events relating to determining actually what it was, if anything which caused the brakes to do whatever they did in this particular collision and find out what potential causes were, or what investigation was done, what all you remember?

Mr. D: I remember we were trying to figure out why the brake pedal was so hard and looking at the brake reservoir I remember the fluid in it appeared unusually dark and I think we opened the top of the reservoir, saw the dark fluid, couldn't figure out what it was and I don't know who the party was, but someone called out a chemist or analyst to take a sample of the fluid, and I don't remember who the gentleman was.

Mr. R: Remember anything about what he looked like?

Mr. D: I wouldn't recognize him I don't think, if he was standing in front of me.

Mr. R: All right.

Mr. D: I don't know if the insurance company sent him out or Frank did.

Mr. R: Yeah.

Mr. D: We went ahead and repaired the damage to the vehicle with instruction not to touch anything with the brake system. And then I recall Frank having it towed to Dave White Chevrolet.

Mr. R: OK. Now when in that sequence of events did the ~~finish~~ hood get pried loose from where it was when it came to your place?

Mr. D: Umm.

Mr. R: Was anybody present at the time that it was marked that it not start to stay officially open? Or it was pried up? Do you remember anything like that?

Mr. D: Umm, this far back, I don't remember any, any longer. It's not uncommon on that kind of a vehicle when you get in a front end impact to jam the hood latch up against the, we call them dog pins.

Mr. R: Um-hmm.

Mr. D: And, that was not uncommon. The practice is still ~~isn't~~ not so uncommon. When they get jammed, there's only one way to open them up and that - to force the hood off, or cut the corners off - off the hood.

Mr. R: So you had to use force then to open this up. So then it would appear to you that after the collision happened, not nobody could have gotten inside to put anything in the brake cylinder up until the time that the car was received there at your place.

Mr. D: No, it was jammed, there was no human possible way to open that hood.

Mr. R: OK.

Mr. D: After the accident.

Mr. R: Now you saw the name of Mr. Clarence Werner in the papers that I just showed you. Do you remember him coming there?

Mr. D: To be honest with you, I don't.

Mr. R: You don't?

Mr. D: I recall Clarence but you're talking about something that happened 5 years ago or more.

Mr. R: Yeah.

Mr. D: I really don't remember.

Mr. R: Alright.

Mr. D: Exactly Clarence's handling the claim.

Mr. R: How, when you opened up the hood, you looked inside the, you call it the master cylinder?

Mr. D: Um-hmm.

Mr. R: What then was it that you saw, what was the significance of what you saw?

Mr. D: Well, brake fluid is a clear substance.

Mr. R: It is?

Mr. D: And the fluid that was in the reservoir, the reservoir itself, is semi-transparent. You can see into it without taking the lid off, and it was very dark in color or towards black. And that led us to believe something

must be wrong with the fluid that was in it. It's unusual for brake fluid to be black, to my knowledge.

Mr. R: OK. Do you recall that whenever the hood was raised that Frank Setola was there?

Mr. D: I don't recall him being there.

Mr. R: OK. Now then, after the hood was raised can you yourself remember any parts of the hood, whatever color it was being splotched on the motor block or on the parts that you see whenever you raise the hood and you look inside?

Mr. D: I don't recall seeing anything like that.

MR. R: I heard you. Alright, so then, do you remember then this chemist coming? Did he take any sample of this?

Mr. D: Yes, he took something out of, he took some of the fluid out of the reservoir, put it in a container. The last I ever saw of the man.

Mr. R: I follow you. It's been several years since I've seen the man, if he's the one that I'm thinking about now, Mr. Larry Wil-Wilson, he's about my build, maybe 5'7, my recollection is that he talks a bit with a West Virginia twang. Does that ring a bell with you.

Mr. D: Not to me, no.

Mr. R: Alright, so then after, stop just a minute, make sure we're getting it. Continuing on then, Mr. Bowers, then, at that point in time, can you

remember what lawyers use in term "theory" or explanations or potential explanations that Mr. Huler and you and the others were talking about in regard to what caused the brake pedal to be as hard as you found it to be?

Mr. D: Judging by the color we saw in the master cylinder reservoir, we anticipated it was a fluid other than brake fluid.

Mr. R: I follow you. That was in there?

Mr. D: Yeah.

Mr. R: Was there anything to indi-that would indicate how long that type of brake-I'm going to use the word "contaminant", osmething foreign to the regular, what you call the natural, clear fluid for brake fluid, as to how long it had been in there?

Mr. D: No, there's no way for me to guess, I have no knowledge of, chemical knowledge of what's ever the fluid turned out to be. I thought I - I think I remember some - I asked Bob if they ever found out what the results were and I thought someone came up and said "engine oil", but I don't know that for a fact.

Mr. R: I heard you there. Alright, so then, in time then, the car was - did Setola come in from time to time to your...

Mr. D: I believe to check on the vehicle, to see what our status was on the car, a lot of customers, it was common for

them to come and then look at the car under reconstruction.

Mr. R: Who were the people working there with you in American Customs then?

(secretary error should be Bart Lea)

Mr. D: Bob Schuller was the owner, and Bartlay was the Service Manager.

Mr. R: How do you spell his last name?

Mr. D: Schuller or Lay?

Mr. R: Lay.

Mr. D: Lea.

Mr. R: I've got you.

Mr. D: And Bart would have been responsible at that tike, back at that date to see that all of the mechanical items on a collision job were back to factory specification, and normally we would do most of the mechanical work before it would get to the body shop.

Mr. R: I follow you.

Mr. D: But I vividly remember having strict instructions to leave the brake system alone on the vehicle.

Mr. R: I understand you. And who were the people working under Bart Lea? OR under you?

Mr. D: O golly, yeah.

Mr. R: The mechanics.

Mr. D: Doug Brown was one of the mechanics at the time, I don't know if he worked

on the car, I can't recall, uh

Mr. R: Is he still with American Customs?

Mr. D: I think he is.

Mr. R: I've got you.

MR. D: And the body man most likely would have been a gentleman who still works here, his name is John Stoll - S-T-O-L-L. And most likely he would be the one that did the majority of the collision work, but not all of it.

Mr. R: Um-humm.

Mr. D: He may have done some of the body work on the vehicle, and we had several painters back then, and I couldn't tell you who painted the vehicle, at that particulat time. I do remember going out and examining the back end of the vehicle, cause Frank was curious about thinking that the back part of the vehicle had been spray-painted at one time, from Bob Schuller's and my examination of the rest of the car, somewhere during the life of that vehicle, the back end of that car has had paint work on it.

Mr. R: I follow you. It was different from the original?

MR. D: Yes, it was either done after it left the assembly line, and you know, at the assembly the plant or at the car dealership, or I couldn't tell you exactly where but a Corvette is painted in its entirety before it is assembled. And there is no overspray on anything because the parts aren't assembled on it.

Mr. R: I follow you.

Mr. D: And there was overspray I remember somewhere around the gas door opening and I believe possibly around the rear hatch rubber weather strips.

Mr. R: That's - so that be an indication the car had been in an accident before, a collision?

Mr. D: NOt necessarily.

MR. R: No?

MR. D: Not necessarily, just that it had had paint work. I don't recall seeing any signs that the vehicle had had Prior damage, just that it had had paint work.

Mr. R: Alright. Then, when the car then went to Dave White Chevrolet, when it went over there, did you or anybody from American Customs go along?

Mr. D: No, but I had remembered going down that day to pick up some parts at Dave White's, and I saw Frank, his attorney, someone from General Motors and one of the mechanics at Dave WHite Chevrolet examining the brake system, and I didn't get involved in the conversation, it was

Mr. R: OK. You said somebody from General MOtors was

Mr. D: I thought a factory rep or someone was there at that time or someone from their legal staff, uh, someone was there representing General Motors in one form or another.

Mr. R: I see. Did you recall how you got the information? Were you, do you

Mr. D: I was walking by, uh, I

Mr. R: ... the assembled group then?

Mr. D: They were in one of the service bays and I happened to walk through that and, area to get to their Parts Department and I had seen out of the corner of my eye Frank standing there and one of the mechanics and who the other gentlemen were, I think I just assumed that one of them appeared to be Frank's attorney and I was under the impression from the stories that I heard that someone from GM was there to examine and...

Mr. R: I follow you. Then you didn't stay around during when they examined the

Mr. D: No, it was none of my business.

Mr. R: I heard you. Then after that, what was the next thing that transpired in regard to the Corvette that you recall?

Mr. D: I heard something from Frank I thought that I can't remember if it was General Motors or his insurance company, I thought General Motors paid to have the entire brake system replaced. The master cylinder, the calipers, brake hoses, anything that could have been permeated by the contaminant, whatever it was.

Mr. R: Yes.

MR. D: And I hever heard what the contaminant was that I recall for certain.

Mr. R: OK. Well, now then, let me see here, then, the car was brought to your place in time?

Mr. D: I believe so. I think it was towed from our store down to Dave White's and I believe towed back.

Mr. R: Dave White's did brake work on it. Let me show you what, now I don't have these in necessarily correct order so it's kind of open so whatever you see in regard to that.

Mr. D: It was like what I was told, they replaced all the...Like some of these things have nothing to do with the brakes.

Mr. R: Uh-huh. Alright, now then, are you looking at one with this kind of writing on it?

Mr. D: All parts needed were not in stock.

Mt. T: Here's one that refers specifically to April 24th of '86.

Mr. D: These things are just like reading hieroglyphics.

Mr. R: Yes, they are.

Mr. D: 1-1-85. That would be before the accident.

Mr. R: That '85 is a mis..., I don't know how that got in there, frankly.

Mr. D: This here looks like the....look at all this writing in there. What date's this supposed to be?

Mr. R: Well, I'm looking here that's written about the brakes, says 4-24-86, it says "2 R spent on 4-21-86 to tear down and then put back together May the 9th, removed all 4 brake calipers and master cylinder completely disassembled, it looks to me like each item, great something lock was of all, was of all metal and wheel lines for. ..... looks like ..... or something.

Mr. D: the name is in the repair

Mr. R: It's 7-11-16 is Work Orders Order No. 7-11-614, got those and 7-11-07 is earlier.

Mr. D: 7-11-067 but I sure can't read the date on it. Where it says "date of sale, it's got a phone number. One of these I think is his car phone. What did they ever find was in the brake fluid?

Mr. R: On, well then, now that's

Mr. D: I'm just curious it's

Mr. R: Oh, now let me show you that because responsibility.

Mr. D: Bob was more involved with whatever was happening.

Mr. R: I follow you there.

Mr. D: Let's see the estimate.

Mr. R: I'm a coffee drinker so I spilled some coffee on that but there you are, that's one of the benefits.

Mr. D:

Mr. R: Tony Georgetti was the attorney for Setola at that time. He said he came there on February the 18th 19 6 so it wasn't there too long, then that car stayed where Frank first had it towed. They call it a hydro-carbon mineral oil, but what it is, I don't know... Glycol, does that mean anything?

Mr. D: Nothing to me. After that truck driver was getting ready to leave and I would start the vehicle and move it I would press on the brakes, it was just like stepping on the rock of Gibralter.

Mr. R: Um-humm.

Mr. D:

Mr. R: Well now then, I've seen you've got some your readings and comments here from this man who's a Larry F. Wilson. He's an engineer and he's got an engineering consulting firm. He used to be out by the old airport out around Walbridge, Ohio so that's where his office was when I first met him, but I've heard different conclusions drawn by different brake people. Now then, did you look at these photographs for the, these pictures of the

Mr. D: I remember the guy came out *PD taking pictures now, I just don't think I can remember, ~~I remember pulling the caps off and taking that picture~~ *PD I was standing behind him.

Mr. R: Oh, you mean the day out at Dave White's?

Mr. D: No, this was from, I thought, isn't that from American Customs?

Mr. R: Well that it may be, I'm not sure.

Mr. D: I think that's where he took those at cause there's still fluid in the reservoirs, so I thought according to that report, it said he drew it all out. See how dark that is?

Mr. R: Yes, It is.

Mr. D: Brake fluid's clear, just like, Oh, golly, there is a similarity

Mr. R: Like Johnson's baby oil?

Mr. D: Not quite that clear, similar. Power steering fluid does have the same consistency, a yellow cast to it.

Mr. R: Oh, it does?

Mr. D: Yeah, it's

Mr. R: Well, then this...

Mr. D: That fluid was dark, though, on the blackish or brownish side.

Mr. R: Alright, when you look at these, are you familiar enough with brakes to look at the calipers here, or anything to show, see whether or not this would indicate that there had been any brake problems and for what period of time?

Mr. D: I'd have to compare it with a new one, one that would be swollen would be contaminated because that's what happens with contaminants. They will cause the rubber seals to swell where brake fluid doesn't, it doesn't attack the rubber.

Mr. R: Alright, does these photograhs mean anything to you particularly?

Mr. D: No, to be honest with you, no.

Mr. R: OK. Alright, then after they were there then, was there any discussion between Bob Schuller and you concerning them, or anything like that?

Mr. D: No, it was, no, we were told to leave the brake system alone and

Mr. R: Yes.

Mr. D: And I think the only time we touched it was somebody was there to examine for what reason and we were instructed to do whatever we were instructed to do with it.

Mr. R: Alright, When the car came back then,

Mr. D: Back from Dave White's?

Mr. R: Yes, Could you press the brake pedal then? Do you remember anything about that?

Mr. D: No, I think, I don't remember why the vehicle was brought back, neither Frank, the insurance company hadn't paid us yet, I don't recall why it came back. Where there was something additional they wanted done, I thought the car was completed when they removed it from the premises.

Mr. R: Yeah.

Mr. D: I thought it was towed down to DAve White's and towed back, I don't honestly recall.

Mr. R: Alright. Was there any other evidences of any defects in the brakes?

Mr. D: Just that the pedal was unusually hard.

Mr. R: I follow you.

Mr. D: And that we could see the discoloration in the fluid.

Mr. R: OK. Alright. OK. Was there anything that indicated to you that the contamination that was in the master cylinder had gotten there before or while the car was in GM's hands and before it got to Bob Schmidt's hands?

Mr. D: No, there was no way to tell.

Mr. R: OK. Alright, just a minute. Let me get that on there. Alright, you're talking about a pin...

Mr. D: There's a pin on the hood of the Corvette, yeah there are latch plates on the cowel or the fire wall of the vehicle, and when the pins, when the hood's closed, those pins are down through this receiver, and on impact it will wedge those pins at an angle, and there's no way for the hood to come up without forcing it off.

Mr. R; I follow you.

Mr. D: So there,s no way that in my opinion that anyone could have opened that hood through any other manner other than - I think we cut the corners off that hood to remove it. It had to forcibly be ~~yeah~~, opened, there's no

way that that hood could have been opened after the accident except by force.

Mr. R: All right. Ok, there was no indication that it had had been opened?

Mr. D: None whatsoever.

Mr. R: Before it got to your place?

Mr. D: No, none.

Mr. R: Alright. Now then, OK, heree is a group of the papers from Bob Schmidt Chevrolet and now Setola says that they were telling him you've got rocks in your head, you're just talking about complaints with the brake system and he then said that the brake systems were not working. Is there anything in there that would indicate to you that the repair people should have found out about the contamin nts that were in the master cylinder that you saw, in other words, here, he got the car back from Bob Schmidt, I believe it's the day before this happened. He says that he even telephoned from downtown Toledo. See, his wife had some kind of a truck pricing business, you know where rates, stuff like that, and she was in the same building, the Security Building where I was at the time. And so that's what caused them, I think, to hire me, because there was some differences that developed between

(Inaudible - End of Side 1)
Beginning of Side 2 of Tape

Mr. D: OK.

Mr. R: You're looking now at the repair papers of Bob Schmidt Chevrolet. And would you say that cause a person in the - a repairman to look at the master cylinder at that time, to open it to check for

Mr. D: Well, I would think they would want to inspect everything to see why the rear brakes were locking up.

Mr. R: As a part of that inspection then in you, would think that they would have looked inside the brake, inside the brake cylinder, the master...

Mr. D: I would think so. The master cylinder.

Mr. D: I think it's a little more legible.

Mr. R: Oh, brother, think what a lawyer, what time do you got? We're going to try to confuse other people, you know like doctors, you know, you on handwriting

Mr. D: ... backing up

Mr. R: Frank Setola says that's even more than what's shown there.

Mr. D: I heard more or less as rumors that ~~all the blood in~~ these files disappeared from Bob Schmidt after they requested them.

Mr. R: Yeah.

Mr. D: They couldn't find them

Rear wheel, and left rear wheel, and wheel seems to lock up sometimes. At times.

Mr. R: What's the date on that one?

Mr. D: Uh, I think that's a continuation of yeah,

Mr. R: December the 19th?

Mr. D: I think so. Was this a brand new vehicle when he bought this at...

Mr. R: It was. He bought it as a new car,

Mr. D: Not in trade or something?

Mr. R: I think that they could, let's but it must have been something like that so that if you check, he bought it in December of 1985. By that time, then your '86's are your new car.

Mr. D: . . .

Mr. R: How that all fit in that way, I'm not really sure.

Mr. D: Well back on December 19th, of 85, you have 32...it revolves on.

Mr. R: Not many.

Mr. D: Remove dime jammed in, can't, I can't ...sure that it remove dime jammed in something and then customer has large pile of cat litter under driver's seat.

Mr. R: Yeah.

Mr. D: I remember something about when that car came in there, there was a bunch of cat litter in it, we couldn't figure out why. I think it was this vehicle. I thought it was strange that there was a pile of cat litter in the car.

Mr. R: Yeah.

Mr. D: . . . Boy, this/sure seems strange the way that these are written, I'm not familiar with the way they do business out at Bob Schmidt's. I don't understand the way these are hand'written, and they aren't anything like these. Is that a common practice for them to have the additional?

Mr. R: I'm not sure about that.

Mr. D: I'm surprised /he bought the car after reading all these complaints that he had about it, most of them are when he first bought it.

Mr. R: Well, now he bought it Dec ember the 5th

Mr. D: . . . I can't understand this, it says something about filling a reservoir but I don't know what reservoir.

Mr. R: Somebody indicated that could have been the

Mr. D: Coolant?

Mr. R: Power steering or something like that.

Mr. D: Well I see that's something in here about the radiator had a coolant leak, it's possible it could have been the coolant reservoir. Check and fill reservoir. What reservoir?

Mr. R: Yeah.

Mr. D: I'm trying to play detective.

Mr. R: Well that's OK. But you had said that at least on this December the 19th,

repair order or work order, whatever you call that, that then you would think their mechanics following the standard of practice of like good, competent mechanics follow would have inspected the brake cylinder and would have seen then, whatever was to be seen inside of it then.

Mr. D: I would have thought so, I mean, if somebody complained to me about brakes locking out, not only would I first drive the car and both wheels to inspect I would, I would think one of the first things you'd look at would be the master cylinder just to see if it's high, low or

Mr. R: Um-hmm.

Mr. D: Whatever.

Mr. R: Alright. But so outside of that you didn't notice anything particularly unusual that's shown inthe work orders of ... Bob Schmidt?

Mr. D: Yeah, some of the way the work orders are handwritten. I ~~wasn't~~ would like sure - like to look at some of their other ones involving other vehicles just to see if it'd have the same consistency.

Mr. R: I follow you. Alright. OK.

Mr. D: ...involved in requesting those files, could you . . .

Mr. R: Well, that - I've got, now I'm going to have to recheck with Frank to make sure the particular days that he says it was there, but he says it was there

more often than this, and one time he said he drove to New Jersey, he had a, had brake problems, came up to a stop sign, he could not stop, had an accident. He then had the car towed all the way back to New Jersey to Maumee. It cost him around $400.00 but he said that the Chevrolet dealers out there didn't want to touch the car.

Mr. D: A Corvette is a strange animal. Most of the customers, Corvette owned are very fussy, very picky and most repair businesses don't want them for customers. Cause they're nit-pickers.

Mr. R: Oh, I follow you. Yeah.

Mr. D: And we specially cater to that.

Mr. R: I follow you

Mr. D: Um-hmm. And we got paid for it.

Mr. R: Um-hmm. Alright. Now do you think that you'll be home, do you get home any regular time or anything like

Mr. D: No, no, I'm a manager and I've got dinner meetings sometimes,...meetings,

Mr. R: Well, then when I get this typed I should just give you a call.

Mr. D: Yeah.

AFFIDAVIT SIGNATURE PAGE

Have you read your foregoing Affidavit of 15 number of pages, including this page? yes
yes

Do you swear before me, a Notary Public, State of Ohio that your statements, to the best of your recolleciton, are true? yes
yes
_____.

Pete DeWees (s)
Signature of Affiant

Sworn to before me and subscribed in my presence this 5th day of July, 1991, 1988.91

John G. Rust (s)

FILED
92 JAN-7 PM 4:13
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Frank Setola, et al.,	*	Case No. 3:90CV7317
Plaintiffs,	*	Judge Nicholas J. Walinski
vs.	*	AFFIDAVIT OF ALAN J. KAROLY
Bob Schmidt Chevrolet, Inc., et al.,	*	John G. Rust (0000098)
Defendants.	*	4628 Lewis Avenue Toledo, Ohio 43612 (419) 476-0347 Attorney for Plaintiffs

* * * * * * *

STATE OF OHIO)
) SS
COUNTY OF LUCAS)

Alan J. Karoly being first duly sworn, deposes and states as follows:

I graduated from Macomber High School, where I had mechanical training; and after that, I have worked as an automobile mechanic at George Ballas Buick Co.; and as a mechanic also at the Commercial ~~Car~~ tire Co., Toledo, Ohio;

also at King Radiator. I worked at George Ballas as a mechanic for about 2 1/2 years; I started in my own business in 1986, and have continued and run that business successfully under the name of AJ Towing and Automotive, 653 Millard Avenue, Oregon, Ohio. I became a certified mechanic by taking a test and have a certification in automotive and truck; and I have passed their test in all seven categories, and am classified as a Master Automotive and Master Truck Repairman.

I have reviewed the Affidavit of Mr. Frank F. Setola of 28 number of pages. And, accepting what he has said therein, as to what he did and found, as true, it is my opinion as a Certified Master Mechanic that the brakes did fail on the Corvette, which he was driving, in the collosion of January 30, 1986, on the Anthony Wayne Trail, at its intersection with City Park, Toledo, Ohio. The statements by Mr. Setola as to the performance of the Corvette, the performance, complaints

and problems about the brake system of the Corvette, what he experienced, are credible, reasonable and consistent with what I have learned about brake systems, including the brake system of the Corvette. I have worked on the Corvettes and their brake systems.

What I have learned about brakes, is consistent, with Mr. Setola's statements, that as he was driving the car, pushed down on the brake pedal, and it would not go down, but at the end, just before the impact, it did go down, when there was a pop, and afterwards that the brake pedal went all the way to the floor, and that there then no brakes, and these statements are consistent with what I have learned about brakes. In other words, when the brake pedal did go all the way to the floor, that showed that there were no brakes then. I have noted also the statements, that the Corvette was towed then to the residence of Mr. Setola at 5 Points Roads, and then towed to the American Customs, a recognized garage

considered to be expert in Corvettes. I have also been advised, and accept as true herein, the statements by Mr. Pete DeWees, American Customs, that whenever the Corvette in question of Mr. Setola was received at the American Customs, that then Mr. DeWees checked the brakes, found that there were no brakes; and that later, the hood was opened by the mechanics at American Customs cutting the fiberglass hood, and at that time, it was seen by Mr. Setola, white, sticky, gooey fluid, which made spots on top of the engine parts, inside the hood.

I have inspected the work orders of the Bob Schmidt Chevrolet, Company, as shown on page B-2of the Affidavit of Mr. John Schaller, in Bob Schmidt's Motion for Summary Judgment. In viewing repair order 56862 of December 19, 1985, which shows "Rear Brake Lock-up. Rear Axle LKS." And also the repair order number 57828 of January 23, 1986, which shows on page 2 of 3 "CK for Rear Axle LK at LR wheel and

wheel seems to lock up times," and accepting also that Mr. Setola stated to the Bob Schmidt Service Manager, or repair order writer, as he states in his Affidavit that then it was evidenc that Mr. Metcla was experiencing a hard brake pedal, which would interfere with effective braking action by the brakes, and then the service manager should have informed the mechanics that there was a history of brake problems, and the car should have been looked at, until the cause of the problem was found, and the failure by Bob Schmidt to do this, in my opinion, was not professional, negligent, and in so doing, it's my opinion that Bob Schmidt failed to follow the standard of care and practice that is ordinarily followed by car dealers of like kind and quality under the same or similar circumstances.

In my opinion, the braking system on Mr. Setola's Corvette, which had gotten real hot, according to Mr. Setola, when he had dri-

ven it from South of Perrysburg into down-town Toledo, on Huron Street, so that the wheels were smoking, and then he drives the car from there south to Monroe, west on Monroe to Michigan and South on Michigan to the Anthony Wayne Trail, that this added heat that was being generated on the brakes, in there then conditon, would cause, in my opinion, the brakes not to be as effective when the car was on the Anthony Wayne Trail, as the brakes overall had been whenever Mr. Setola states that he brought the car to a stop on Huron near Madison

My statements of opinion herein, are each one made of what I believe to have been probable under what I have learned from the established principles about brakes, what causes them to function, and what causes them not to function; and I have worked before on the Corvettes and their braking systems.

Accepting Mr. Setola's Affidavit that he received the car back, that is the Corvette,

on January 29, 1986, and that and accepting also the report of Engineer Wilson of the Product Analysis and Structural Testing Company, that the car was inspected by Mr. Wilson, on February 18, 1986, there is a span of time there of 20 days. Considering that and also the fact that Mr. Pete DeWees of American Customs Industry, Inc., stated that there were no brakes on the car, when it was towed into American Customs, it is my opinion, since there was a demonstrated brake problem, when he had the collision on January 30, 1986, that there was also a brake problem on the car, when it left the Bob Schmidt Chevrolet on Friady, January 29, 1986. It is further my opinion, that when Mr. Setola called in the morning of January 30, 1986, reported the problems that he was having on the brakes, that the brake pedal would not go down, that there was smoke around the tires, and that the wheels were not turning smoothly. Then the Bob Schmidt Chevrolet representative

should have advised him to have not driven the car, but to have it towed out to Bob Schmidt, and the failure, accepting Mr. Setola's statements, on the part of Bob Schmidt, to so have warned and cautioned him, and instead, according to Mr. Setola, of having Mr. Setola the car was okay to drive, was negligent, and were acts which showed that the representative in question of the Bob Schmidt Chevrolet Company, were not following the standard of care and dilligence of ordinarily careful and prudent persons in the automobile business, like the representatives of Bob Schmidt and the Bob Schmidt Chevrolet Company. In other words, Bob Schmidt's representative should have told Mr. Setola not to drive the car because it was apparent receiving the complaints that Mr. Setola states that he advised the Bob Schmidt Company of, that the brakes would not operate and it would be obvious then that the car was in an unsafe condition to drive,

and Bob Schmidt should have so advised Mr. Setola.

I knwo that power steering fluid has a hydrocarbon oil, and Bob Schmidt's repair order #57828, 1/23/86, shows that power steering fluid was added by Bob Schmidt Chevrolet.

MEETING OF JGR AND MR. KAROLY

MR. RUST: Mr. Karoly, please turn there to the section of the report of Mr. Larry Wilson of the Product Analysis Company where there was finding to the distortion of one of the calibers.

MR. KAROLY: Well,...

R: Read off the page number to which you are referring in the particular findings.

K: They say on page 2 on the bottom left front and left rear are contaminated with mineral oil.

R: Alright.

K: Apparently, they didn't do any tests. I'm comparing wheel ~~cylinder~~ *caliper sealed, ~~unaudible~~ *cups, the new parts like they did with the master tops.

R: What about the parts that are shown here?

* Handwritten changes by Mr. Karoly.

K: They are all parts removed from the vehicle as far as I can understand.

R: What do these four...say right wheel caliber per cup, and S and seal. Left ~~rear~~ rear caliber, cylinder cup seal. What do these four and others for left front andright front. What do those four photographs show to you?

K: From what I can see from them pictures, it looks like the left rear more than the other three. The cup has swelling some to it.

R: Yes.

K: The seal looks like it could be a little bit larger, but it's hard to tell from a picture.

r: OK.

K: That's the cause of mineral oil coming incontact with them brake parts.

R: What do the conditions shown in those four photographs, in your opinion probably cause in the braking action, how do those conditions affect the braking action of the Corvette in question?

K: When the seals Swell up, contamination, that will cause a wheel to lock up.

R: Which are you talking about.

K: That's a caliber seal. That will cause a wheel lock up or to have a brake that's dragging all of the time.

R: OK. Read off the section of Mr. Wilson's opinion with which you disagree, and state why.

K: Page 4, their conclusion on the last section there, it was impossible however to prove that this had any affect on the braking action of the vehicle. I disagree with that. I feel that because of the parts being swollen up caused a great deal of affect on the braking system.

R: Mr. Karoly, would then read out the parts of the findings of the report of the Engineer Larry Wilson that report number 209586, Brake Failure Investigation, 1985 Corvette for Celina Insurance Company. REad out the parts there of the findings that you feel are significant and wherein you in your opinion disagree with Engineer Wilson.

K: Well, just going back to page 2 with the testing of left front left rear the fluid came out of the two calibers there, both of them ad mineral oil in them, so they are both contaminated and basically the part that I disagree with is it was impossible however to prove that this had any affect on the braking action to the vehicle.

R: That's on page what?

K: Page 4.....last line.....I feel that that would have an affect on the braking system, because....

R: What would?

K: The contamination of the wheel ~~cylinder~~ caliber's for the calibers and master cylinder.

R: Would each have an affect on the braking action?

K: Yes, it would.

R: What would be the adverse or loss of braking action in each of those conditions, either taken singularly or together, would cause?

K: Well, all of them together would cause brake failure, or loss of brakes. The calibers having contaminated fluid in them, would cause wheels to lock up, brakes to drag. The contamination in the master cylinder would cause a hard brake pedal and all of them together would cause a loss of brakes.

R: Alright.....Now then, what was it, in your opinion then, accepting Mr. Setola's statement, that there was a pop, just before the impact, what do you think that pop-showed was happening within the automobile, and what caused that to happen?

K: Well, as the report shows that when they opened the hood on the vehicle for the first time, the tops were off the master cylinder I would have to say that the pop came from the two tops coming off the reservoirs, and the cause of that would be a tremendous amount of pressure influcted upon the master cylinder before the accident. Probably without looking at the parts, one of the cups, or the cup that's inside the master cylinder finally gave out to let the fluid get past and come back up into the reservoir. Because the pressure builds up in the reservoir, and that's what popped the tops off.

R: Alright. When the pop occurred and the cups of the master cylinders blew off, what affect did that have on the brake pedal as to how far it would be pressed.

K: It's very possible that the pedal would go to the floor, then.

R: Alright, you're saying very possible. You mean probable...

K: Very probable.

R: Alright...All of your statements here today are based upon what you would call reasonable mechanic certainty and supported by sound principles of auto mechanics.

K: Yeah.

R: Alright.

All the statements and opinions herein stated are made in keeping with reasonable mechanical certainty and probability, and are supported by sound auto-mechanical practice and learning and experience.

In this Affidavit, the affiant is using the word negligence as the failure of a person to do what a person of ordinary and reasonable care, diligence and prudence would do under the same or similar circumstances, and the word negligence is limited further to what a competent service manager, repair or service order writer, or mechanic, in a garage like Bob Schmidt Chevrolet, Inc. of Toledo, Ohio would do, and an act is termed negligent when the actor is guilty of negligence.

AFFIDAVIT SIGNATURE PAGE

Have you read your foregoing Affidavit of 12 number of pages, including this page? yes

Do you swear before me, a Notary Public, State of Ohio/Michigan that your statements, to the best of your recollection, are true? yes.

Alan J. Karoly (s)
Signature of Affiant

Sworn to before me and subscribed in my presence this 6th day of January, 1992.

John G. Rust (s)

CERTIFICATE OF SERVICE

A copy of the foregoing Affidavit is served upon Counsel for the Defendants, Bob Schmidt Chevrolet, Inc., Attorney Marcia A. Wagner, One SeaGate, Suite 710, Toledo, Ohio 43604, and Attorney Ray A. Farris, for General Motors, Fuller & Henry, One SeaGate, Suite 1700, Toledo, Ohio 43603, by First Class U.S. Mail this 7th day of January, 1992.

John G. Rust